



ISSUE #1 **MAY 2013**

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# IIUSA

# ASSOCIATION TO INVEST IN USA

## REGIONAL CENTER BUSINESS JOURNAL





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# WELCOME

## TO THE 3rd Annual EB-5 INTERNATIONAL INVESTMENT & ECONOMIC DEVELOPMENT FORUM

LAS VEGAS, NV  
6/19-6/21

### SESSION TOPICS

**IIUSA Commissioned EB-5 Regional Center  
Program Economic Impact Assessment/Forecast**

**Updated IIUSA EB-5 Regional Center Industry  
Best Practices**

**EB-5 Regional Center Advocacy:  
Comprehensive Immigration Reform Update &  
Details on other Available Advocacy Channels**

**EB-5 & Securities Laws: Broker/Dealer  
Business Model, Due Diligence & Layers of  
Regulation**

**Analysis of USCIS EB-5 Training & Guidance  
for Adjudicators: What is Really New & What's  
Left Undone**

**EB-5 Regional Center Terminations to Date: An  
Analysis & Look Ahead**

**To Escrow or Not to Escrow...That is the Question**

**Update on USCIS Policy & Case Processing  
(including Trends in I-829 RFEs/Denials in  
2010-2011)**

**Understanding the Exit/Entry Industry in China**

**EB-5 as Part of the Capital Stack: Combining EB-5  
Capital with Other Development Finance Programs**

**'Tenant Occupancy' and 'Visitor Spending'  
Economic Impact Models**

**Global Competition for Immigrant Investors:  
What is EB-5 Competing with in the Global  
Marketplace?**

**Successful Partnership Arrangements  
Between Project Developers & Regional  
Centers**

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# IIUSA

# ASSOCIATION TO INVEST IN USA

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# Welcome

## FELLOW REGIONAL CENTER ECONOMIC DEVELOPERS:

Since its founding in 2005, IIUSA has vigorously promoted regional economic development through the EB-5 Regional Center Program (the “Program”). The front page pictures of this first edition of the *Regional Center Business Journal* are but a few examples of the numerous economic development projects accomplished by IIUSA Regional Center members. This represents real and significant job creation. We will continue to feature, on a quarterly basis, the tangible economic and community development resulting from our members’ work within the Program.

With a three year reauthorization of the Program accomplished in September 2012 and record breaking data coming in for fiscal year 2013 already, the Program currently flourishes and struggles with growth. This quarterly *Business Journal* will serve as an industry resource, publishing data-driven analysis to help our members make informed decisions in the marketplace - while keeping our partner organizations and public sector supporters informed of Program accomplishments.

The *Regional Center Business Journal* features a comprehensive look at our collective efforts in the last several months, including: advocacy, research/education, international outreach, and membership development. Through this publication we expand your options to gather the latest industry intelligence - now delivered through the communications platform of your choice.

None of this would be possible without the continued support and leadership of IIUSA members through its many boards, committees, advisory councils and staff. Thank you for your continued hard work and dedication.

Sincerely,

**K. David Andersson**  
President, IIUSA







# LEGISLATIVE UPDATE: PROSPECTS FOR IMMIGRATION, AND EB-5 PROGRAM REFORM

**A**s you know, the political environment resulting from the 2012 elections has made comprehensive immigration reform (“CIR”) a top priority for the 113th Congress. There has been a great deal of media coverage this year on the various proposals and legislative frameworks that are coming together. President Obama outlined his vision of immigration reform at a speech in Las Vegas this past February. The bipartisan “Gang of Eight” from the Senate unveiled a framework that it had agreed upon involving border security, increased oversight of people overstaying visas, and path to citizenship for those in the U.S. illegally. In addition, there was a bipartisan “high-skilled immigration” piece of legislation (S. 169) introduced by Senators Chris Coons (D-DE), Orin Hatch (R-UT), Amy Klobuchar (D-MN), and Marco Rubio (R-FL) - which would increase the availability of employment-based visas (including EB-5) and eliminate the per-country cap.

All of the parties point to this spring to have fully drafted legislative proposals with hearings and heated debate shortly thereafter, potentially followed by votes. However, the House has not indicated if/when it will produce any bills to act as counterpart to the competing Senate proposal. The last time CIR was attempted at this magnitude in 2007, the effort collapsed and nothing was passed. If that happens again, it is likely

a series of smaller pieces of legislation will be brought up for consideration in Congress. In sum, expect a pointed debate over the coming months!

**What does this all mean for the EB-5 Program?** IIUSA’s Executive Director and Government Affairs team visited Congressional Offices in DC to find out. The IIUSA team met with House Judiciary Chairman Bob Goodlatte (R-VA), including his Committee and Immigration Subcommittee staff. We also met with staff from the Offices of Representatives Andrews (D-NJ), Diaz-Balart (R-FL), and Zoe Lofgren (D-CA); and, Chairman and Ranking Member of the Senate Judiciary Committee Patrick Leahy (D-VT) and Chuck Grassley (R-IA), and Senators Cornyn (R-TX), Hatch (R-UT), McCain (R-AZ), and Robert Menendez (D-NJ) – respectively. All offices voiced their support for the EB-5 Program generally, and were glad to begin engagement with IIUSA, as the EB-5 Regional Center industry representative, on how EB-5 reform may be part of the comprehensive package.

Accordingly, IIUSA is providing feedback to Congress on its advocacy platform based on deliberations taking place among the Board of Directors and President’s Advisory Council – which are well informed by the input of members. Permanent authorization of the Program remains the central theme of IIUSA’s legislative platform, complemented by pro-

visions that will maximize the Program’s capacity for economic impact and job creation in the U.S. through increased availability of EB-5 visas and a predictable, commercially viable adjudications process. The Senate, under the leadership of Chairman Leahy and Ranking Member Grassley of the Judiciary Committee, will likely introduce and deliberate on an EB-5 reform package separate from the other immigration packages being drafted currently. It is useful to review S. 1986 from the 112th Congress, which has an EB-5 reform component as the last section that will act as the starting point for any new EB-5 legislation. Thanks to the Program’s strong bipartisan support, our industry has more than enough time to ensure our seat at the table in any moving legislation.

In addition to Congressional meetings, IIUSA met with SelectUSA, Department of Commerce, to discuss their ongoing involvement in the EB-5 Program as advocate for foreign direct investment inbound to the U.S. and through their ombudsman function. Speaking of “ombudsman,” IIUSA also met with the newly appointed CIS Ombudsman, Maria Odom, and her staff to discuss the risks and opportunities that are emerging from USCIS’ transition of EB-5 adjudications to the DC EB-5 Program Office and the upcoming EB-5 engagement designed to engage with the stakeholder community on these issues. ■



# GOVERNMENT AFFAIRS REVIEW

"In just the last month, IIUSA has collected well over 500 receipt numbers for I-526 petitions from Regional Centers all over the country. The processing times range from 5 to 20+ months. This small sample of the total backlog of I-526 petitions represents over \$250 million in pure EB-5 capital formation. The complete backlog of pending I-526 petitions, based on an analysis of USCIS FY2012 filing statistics, is nearly 4,000 – representing potentially \$2.B in capital formation that will result in the creation of over 40,000 American jobs – all at no cost to the U.S. taxpayer."

"IIUSA, as the trade association and representative of the EB-5 Regional Center Program industry, fully supports the Plaintiff's motion to modify the asset freeze order and return investors' funds directly to them. This action will demonstrate that the United States is governed by the rule of law, efficiently and prudently enforced to protect investor interests – restoring investor confidence in the Program as a result. The difficult economic times of today exacerbate the need for vigilant enforcement of United States securities laws that sends a message to investors that our country is open for investment and those who do invest are protected by our laws."

"Competing immigrant investor programs around the world operate without investment or immigration risk. In the EB-5 Program, investors understand that investment risk is required. The immigration benefits associated with the at-risk investment must be transparent and predictable – or risk undermining confidence and integrity of the Program. We believe this can be fixed with consistent processing times, a transparent policy development process, and substantive communication with the industry."

04/10

IIUSA submits letter to USCIS Director on processing backlog, stifling job creation.

04/05

IIUSA Files Amicus Brief in SEC v A Chicago Convention Center Case supporting SEC's Motion to return frozen assets directly to EB-5 investors.

04/01

IIUSA submits comments on USCIS draft EB-5 adjudications guidance memorandum

03/11

Executive Director Peter D. Joseph Testifies in front of Texas State Legislature Committee on International Trade and Intergovernmental Affairs

03/05

IIUSA Hosted Economic Development Breakfast in Washington DC with Keynote Speakers from Senate Judiciary Committee Staff

03/05

USCIS Ombudsman Stakeholder Meeting, where Executive Director Peter D. Joseph is a featured speaker

03/04

IIUSA meets with members of the North American Securities Administrators Association (NASAA) in Washington, DC

02/25-28

IIUSA meets with Shanghai, Beijing, and Guangdong Exit/Entry Associations in China

02/12

EB-5 success highlighted by members of the Senate Judiciary Committee during hearing.

02/11

IIUSA Supports Interagency collaboration to protect the integrity of the EB-5 Program in the wake of the Chicago Convention Center Case

01/06-07

IIUSA meets with American Chamber of Commerce - South China President, Harley Seyedin, and Senior Foreign Commercial Service Officers in Guangzhou, China

2012

11/12

IIUSA sends letter to USCIS in Follow Up to 10/16/2012 EB-5 Engagement regarding unimplemented policies and slow processing times. ■

2013



# LET'S BREAK THE I-526 BACKLOG!

## SEND IIUSA YOUR WAC#S FOR PETITIONS OUTSIDE OF NORMAL PROCESSING TIMES

**Dear IIUSA Members:**

**O**n March 4th at the IIUSA Leadership Meeting in Washington, DC the Board of Directors formally adopted a resolution to undertake the mission of breaking the unacceptable backlog of I-526 petition processing. This decision came after substantial input from IIUSA Regional Center members who have seen processing time for I-526 petitions grind to an unacceptable length of processing.

In order to remedy the situation, IIUSA intends to articulate the delays in terms of the economic impact that is being unnecessarily halted due to these delays. In other words, we are going to use the data we collect to describe the delays in terms of lost capital formation and resulting U.S. job creation - all at no cost to the taxpayer.

### WE NEED YOUR HELP!

IIUSA is collecting receipt numbers (or WAC#'s, as most of us know them in shorthand) for I-526's that are outside of normal processing times. Email [info@iiusa.org](mailto:info@iiusa.org) to submit your receipt numbers, which will be kept in confidence by IIUSA.

The image below is a screenshot from USCIS' Case Status web application showing the current processing times that they are reporting. IIUSA members have indicated that the times below are not reflective of the real amount of time that it is taking for I-526 petitions to be adjudicated. Help us show USCIS and other interested federal agencies just how slow processing has gotten.

Thank you in advance for your prompt response to the above request. ■



I-360	Petition for Amerasian, Widow(er), or Special Immigrant	Religious workers	5 Months
I-485	Application to Register Permanent Residence or to Adjust Status	Employment-based adjustment applications	April 11, 2011
I-526	Immigrant Petition By Alien Entrepreneur	For use by an entrepreneur who wishes to immigrate to the United States	March 16, 2012
I-539	Application to Extend/Change Nonimmigrant Status	Change status to the F or M academic or vocational student categories	2.5 Months
I-539	Application to Extend/Change Nonimmigrant Status	Change of status to H or L dependents	2.5 Months
I-539	Application to Extend/Change Nonimmigrant Status	Change Status to the J exchange visitor category	2.5 Months

**Email your backlogged WAC#s to [info@iiusa.org](mailto:info@iiusa.org) to make your voice heard!**

## IT'S WORSE THAN WE THOUGHT...

**O**n Wednesday 4/10/2013, IIUSA sent a letter to USCIS Director Alejandro Mayorkas concerning the processing backlog and its detrimental impact on the success of the EB-5 Program. IIUSA notified Mayorkas of its pool of over 500 WAC#s for backlogged I-526 petitions collected from our Regional Center members all over the country,

representing over \$250 million in pure EB-5 capital formation. In this small sample, processing times range from five to over twenty plus months. **Further research using USCIS Case Status data brought us to the exact and staggering number of pending I-526 petitions to be 5,887 (as of January 2-13). It now be-**

**ing late-April, the number is likely closer to 7,000 pending (or \$3.5+ Billion and 70,000+ U.S. jobs).** This kind of inefficiency and unpredictability in processing times would lead to seriously negative consequences in the EB-5 Program at a time when it is peaking in economic growth and regional development nationwide. ■





**By Robert C. Divine**  
**IIUSA Vice President**

*Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.*

**O**n February 14, 2013, USCIS disseminated publicly a draft policy memo concerning the employment-based fifth preference (EB-5). This article (1) notes the relatively few noteworthy changes to the prior disseminated draft from November 2011 and (2) identifies some critical topics not addressed by the memo.

The new draft clarifies a disappointingly small number of issues and continues to many important issues of significant uncertainty. Nevertheless, every effort at clarification should be appreciated so I list them here:

- 1** Adds to intro language to set a balanced program tone, including reference to “ensuring program integrity”;
- 2** Makes many small technical legal and stylistic changes;
- 3** Opposes a guaranteed right of investor’s eventual ownership in a particular asset (to be subtracted from capital at risk) [note: USCIS has said this orally in stakeholder meetings and in some adjudications, but never in public writing];
- 4** Clarifies that payment to investor of return on investment (i.e., profit, vs. redemption of capital) during or after conditional residency is acceptable;
- 5** Recognizes risk spreading by the single investment enterprise among multiple projects (100% subsidiaries for non-RC sponsored) [ but note USCIS has tended to state that the projects must be identified in the I-526 of each investor relying on them];

# NEW DRAFT EB-5 POLICY MEMO FROM USCIS:

## WHAT’S REALLY NEW, AND WHAT’S LEFT UNDONE

**6** Offers positive examples of restructuring/reorganization for NCEs established before Nov. 29, 1990 (converting restaurant into nightclub, or adding substantial crop production to an existing livestock farm);

**7** Suggests that requested RC areas often are best justified by showing significant contribution to the supply chain and labor pool of proposed projects;

**8** Recognizes that investors in troubled businesses may combine preserved and newly created jobs;

**9** Recognizes, consistent with Director Mayorkas’ letter to Senator Leahy a few years ago, that investors may count indirect jobs located outside the RC boundaries [but providing no criteria about any limitations on this option, if any];

**10** Hedges from prior discussion, suggesting a need for causation between injection of EB-5 capital and creation of created jobs claimed, while still recognizing that the NCE or JCE creates the jobs;

**11** Sets presumptions for I-829 adjudication of “reasonable time”: one year generally OK, but beyond that only if “extreme circumstances” such as force majeure;

**12** Articulates of deference policy to cover prior same-project adjudications not only I-924 but also prior I-526s, though no deference if “material change” meaning having a natural tendency to influence or predictable ability to affect the decision, and deference to I-526 approval when adjudicating I-829 on same plan;

**13** Maintains that material change after filing I-526 up through admission as a conditional resident require new I-526 (and any approved I-526 will be revoked), and cites as “material” (a) cure of a deficiency and (b) change of industry group claimed [note: it is not

clear whether “another industry group” refers to real change of business plan vs. simple change of NAICS codes claimed to meet USCIS ever-changing perspectives on this];

**14** Recognizes that changes after admission as CPR can be significant without preventing I-829 approval as long as capital remained at risk (including being “expeditiously” shifted from one plan to another) in a job creating enterprise within scope of industry approval of the same RC, and as long as there was not a preconceived intent to make the switch;

**15** Repeats some policies already articulated in other memos, such as the requirement that jobs last at least two years to be sufficiently “permanent” to be counted (12-11-2009 memo), the requirement at I-526 to show that jobs will be created within 2.5 years of I-526 creation (12-11-2009 memo), that different investors/projects cannot count the same jobs (most recent TO memo).

The February 2013 draft fails to provide desperately needed guidance and clarification on many topics, which I list here from a first reading in hope that readers will share with IIUSA or AILA any other topics they believe need coverage, so that the most effective comments can be provided to USCIS. Such omissions include the following:

- 1** Whether the new commercial enterprise (NCE) can have the option to buy back an investor’s interest after the end of the investor’s conditional residence.
- 2** Whether sale or refinance of the job creating enterprise (JCE), ostensibly because of its success, may occur before the end of conditional residence and generate return of capital to the NCE, even if the NCE does not distribute the capital to investors until after the end of conditional residence.



**3** Whether and under what conditions a NCE may identify a business plan to generate jobs in and remove capital from an initial job creating enterprise and move the capital into subsequent enterprises during the investors' conditional residence (particularly, must all future such JCEs be fully documented in I-526, must they be principally doing business in RC or TEA, and must they create any new jobs if the original JCE maintains the jobs).

**4** Whether a NCE may condition release of funds from escrow until a certain number of investors' I-526 petitions are approved (as opposed to only the approval of the respective investor's I-526).

**5** Whether direct jobs created outside the RC area or TEA may be counted even when most jobs are created within the area ("principally doing business, and creates jobs in"), and whether indirect jobs arising from such direct jobs can be counted.

**6** Whether investment across a portfolio of businesses must provide in I-526 a Matter of Ho compliant business plan for all of the businesses in the portfolio.

**7** What constitutes the location of a job for purposes of such determinations as whether the enterprise is principally doing business in a RC or TEA. (Note questions of where the employee is physically and how often, where facilities are located, whether the employee reports to a remote location, etc.)

**8** Whether a TEA investment may span multiple TEAs in multiple states.

**9** Whether an area other than a county or MSA may be considered a TEA even without state designation, such as a single census tract, if publicly available data demonstrates the area has 150% of the national average unemployment.

**10** Whether an NCE making loans to nonprofit entities may qualify.

**11** Whether the investor may take credit for job creation arising from other funds not only invested in the NCE (the subject of the pre-RC regulation about "multiple investors") but also from other funds invested in or loaned to the JCE [Note: this seems generally accepted in practice, but the memo mentions

only the language of the regulation that preceded RCs].

**12** Whether investors in entities other than limited partnerships having very limited control similar to limited partners may be considered to be sufficiently "engaged in management" [Note: current USCIS' training manuals have clarified this, but the draft memo omits reference].

**13** Whether "verifiable detail" and "detailed statement" is consistent with the amended law concerning regional centers that requires only "general proposal" and "general predictions."

**14** Whether regional centers must be involved in developing, promoting/marketing, managing specific projects to foreign investors, as opposed to merely promoting the economy of the region including seeking, monitoring, and reporting to USCIS about qualifying projects whose developers can market and manage the projects themselves [generally accepted, but the memo omits].

**15** Whether a RC amendment MUST (vs. MAY, per I-924 instructions) be filed and approved in order for I-526s to be filed by investors in projects using different job prediction methodology [stated in the negative twice in stakeholder meetings but nothing written down], or under sponsorship of RC that has undergone administrative change (ownership or management) [USCIS has stated in stakeholder meetings and I-924 instructions that only email notification is necessary, but some emails from the Immigrant Investor Program suggest otherwise].

**16** Exactly which types of expenses of a project may or may not be paid with EB-5 capital (interest on loan of EB-5 capital, broker dealer fees, project development fees, etc.)

**17** Whether a worker authorized to work in the U.S. under TPS, deferred action, pending application for suspension of deportation or cancellation of removal, may be considered a qualified employee [Note: what is "an alien remaining in the U.S. under suspension of deportation"?]

**18** What is the legal basis for USCIS application of a policy requiring that RC-sponsored jobs be created before the end of conditional residence.

**19** A host of questions USCIS addressed orally in recent stakeholder meetings but has not written down anywhere, such as to what extent part-time jobs and jobs employed by the JCE outside the U.S. are factored in.

**20** Under what circumstances can the jobs of a tenant of the JCE, or jobs arising from visitor spending, be counted. [Note: USCIS has written only indecipherable memos on tenant occupancy, and no known decisions in contested cases].

**21** When direct vs. indirect construction jobs can be counted, as a practical matter, how "hard" and "soft" costs must be analyzed separately.

**22** What USCIS means when in requests for evidence it requires "verifiable detail" about various items.

**23** How NAICS codes are required, and on what legal basis.

**24** When capital is considered "invested" for purposes of TEA designation, troubled business assessments, etc.

**25** Whether the point to which an investor must maintain investment and show jobs is the filing of I-829, the expiration of conditional residence (shown on card), or the adjudication of I-829.

**26** Whether and under what circumstances EB-5 capital may be used to repay bridge financing (debt or equity).

**27** Whether jobs count if they were created on an indefinite basis during conditional residence but were lost before I-829 filed.

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USCIS simply is not keeping up with the number of questions that reasonably arise for well intentioned developers and investors-- questions that need predictable answers for prospective planning of major enterprises and projects. The government is not making EB-5 Program attractive to developers and investors when they can only find out what the rules might be until after they spend hundreds of thousands or even millions of dollars in project development and marketing and the investors file their I-526 petitions. ■



# IIUSA SUPPORTS INTER-AGENCY COLLABORATION TO PROTECT THE INTEGRITY OF THE EB-5 PROGRAM

**By: Peter D. Joseph**

*IIUSA Executive Director*

**T**he Association to Invest In the USA (IIUSA), the national membership-based industry association of active EB-5 Regional Centers, supports the recent action of the U.S. Securities and Exchange Commission (SEC) to stop a Regional Center and developer in Chicago from making allegedly misleading claims to investors who sought U.S. permanent residence through their investment and resulting economic impact. (See SEC press release). IIUSA also applauds U.S. Citizenship and Immigration Services (USCIS) for its cooperation with SEC in the matter – to protect the integrity of the EB-5 Program.

“This is exactly how the system should work,” said K. David Andersson, President of IIUSA. “This initial enforcement step by the SEC shows project developers and Regional Centers that compliance with securities laws is not optional. Of course, investors should perform

thorough due diligence in choosing investments, but this shows that our nation’s securities laws have real remedies to stop the few bad actors that can be found in any industry.”

“IIUSA regularly provides education to members on securities law compliance, and being forthright with investors is obviously at the top of the list of the best practices we promote in the area,” said Peter D. Joseph, Executive Director of IIUSA. “We welcomed a former SEC Chairman to discuss best practices in compliance at our most recent industry-wide conference. I expect to see increasing interest in our securities law compliance education seminars going forward.”

In 2011, the Senate Judiciary Committee held a hearing about the EB-5 regional center program. Senators had questioned whether additional legislation is needed to prevent fraud on EB-5 investors. Robert C. Divine, Vice President of IIUSA and an attorney at Baker

Donelson law firm, testified that the temptation of securities issuers to mislead investors is not unique to the EB-5 program, and U.S. law already provides for criminal and civil penalties to prevent, stop and remedy securities fraud. “Now we see it in action,” said Divine. “Let the buyer of securities beware of crooks, but let the crooks beware of the law and its enforcers.”

IIUSA estimates that since 2005, the EB-5 Program has contributed over \$4.7 billion of foreign direct investment (“FDI”) into the U.S. economy, creating over 95,000 American jobs and generating over a \$1.0 billion in federal/state/local tax revenue. Trends indicate that 2013 will be record-breaking, accounting for over \$2.0 billion in FDI, creating over 40,000 American jobs and hundreds of millions of tax revenue. IIUSA welcomes the inter-agency collaboration between the SEC and USCIS in order to allow the Program to continue its growing economic contribution to the U.S. ■



## IIUSA SUPPORTS COURT ORDER TO BEGIN RETURNING FUNDS TO INVESTORS IN SEC ENFORCEMENT ACTION AGAINST NON-MEMBER REGIONAL CENTER

**By: Peter D. Joseph**

*IIUSA Executive Director*

**O**n Friday April 19, in the U.S. Securities and Exchange Commission’s (SEC) enforcement action against the Intercontinental Regional Center Trust of Chicago (a non-IIUSA member Regional Center), et. al., the

Honorable Judge Amy St. Eve issued an order modifying the court’s asset freeze order and directing the escrow agent to return escrowed funds directly to investors. This order follows a motion by the SEC to modify the asset freeze, which was supported by an IIUSA amicus brief and agreed to by the defense. IIUSA fully supports the court’s action. It dem-

onstrates that U.S. securities laws protect investors from fraud and breach of contract – efficiently making investors as financially whole as possible, while respecting individual choice, by returning the frozen funds directly to investors. The escrow agent will begin working on returning the funds directly to each investor. ■





**WRIGHT JOHNSON**

*professional authors and analysts*

## REGIONAL CENTER DEVELOPERS

**W**right Johnson is the national leader in EB-5 Regional Center consulting. We are a preferred consulting firm for Regional Center applications and economic analysis. Wright Johnson prepares the necessary materials for the regional center application/submission required by the USCIS for approval of a Regional Center.

USCIS guidelines for Regional Centers are complicated and difficult to comprehend. Our Regional Center experience will help the client successfully navigate this complex process. A major advantage provided by Wright Johnson to our clients. Wright Johnson is one of a small number of firms, and the dominant non-law firm that truly understands what is required by USCIS to obtain a Regional Center designation.

## WRIGHT JOHNSON ADVANTAGES

**W**right Johnson business strategy includes the following key elements:

The Wright Johnson team utilizes only the needed people to perform each specialized task, insuring that Wright Johnson is there when you need us and can respond efficiently and quickly.

**Experience:** Wright Johnson has significant EB-5 experience. Wright Johnson is responsible for the USCIS approval of over 40 Regional center applications. This excellent record is due to our attention to detail that is an absolute requirement of the USCIS in their approval process. Additionally, our breadth of experience with USCIS, allows us to position your application for success. We have an excellent understanding

of the points of emphasis focused on by the USCIS adjudicators.

**Wright Johnson is a "one stop shop."** All elements necessary for the Regional Center process are under one roof, including Research, Plan Writing, Economic Analysis, and Project Analysts. Further, Wright Johnson prepares USCIS compliant economic impact studies and business plans for projects within a number of the approved regional centers.

**Complete Package:** Wright Johnson has a total package solution for the EB-5 application. We have a complete working knowledge of all USCIS approved formats for every phase of the application.

**Learn more.**

Contact Us at (424) 777-5562 or [info@wrightjohnsonllc.com](mailto:info@wrightjohnsonllc.com).





**By: Lincoln Stone**

*Partner, Stone & Grzegorek, LLP*

*Vice Chair, American Immigration Lawyers Association (AILA) EB-5 Committee*

During July 2012, in response to a request made by the nonprofit association Invest in the USA (“IIUSA”) under the Freedom of Information Act (“FOIA”), U.S. Citizenship and Immigration Services (“USCIS”) produced 248 letters<sup>2</sup> authored by USCIS and legacy U.S. Immigration & Naturalization Service (“INS”), approving applicants for designation as a regional center under the Immigrant Investor Pilot Program.<sup>3</sup> Some 186 of the letters – the vast majority -- are for original regional center designation, whereas the balance of the letters provide for amendment to existing regional center designations. The FOIA production covers USCIS and INS regional center work product ranging from 1994 to May 2012. While USCIS has yet to release information that it is systematically collecting about regional center applicants and their investment enterprises, the objectives of this paper are to provide a general and high-level overview of the USCIS work product, and to identify a few trends that may lead to further investigation.

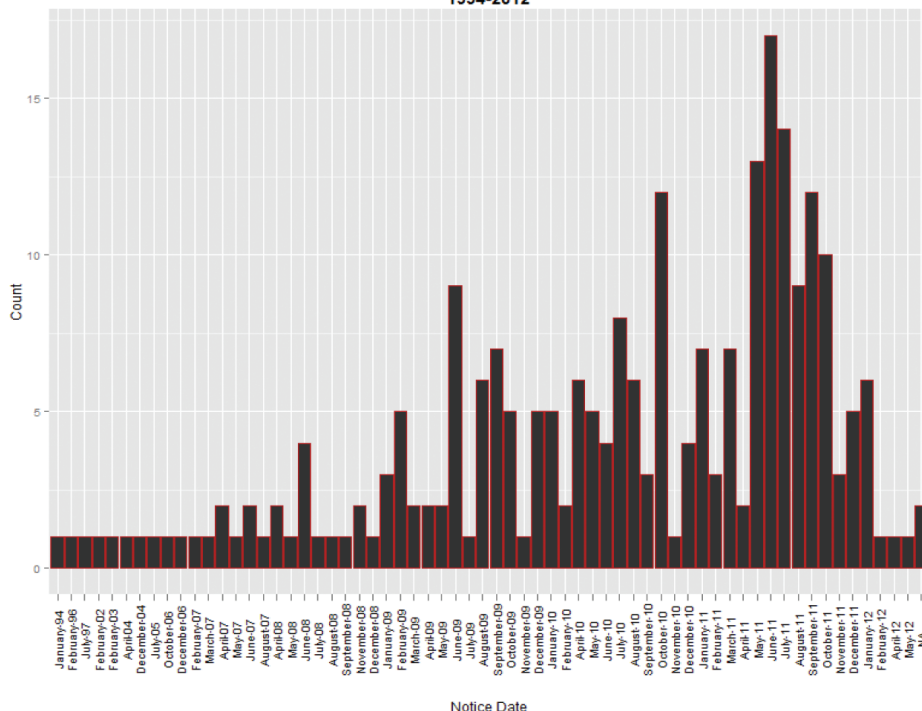
## TRENDS IN VOLUME

What is most striking about the first graph is how it clearly depicts the spike in regional center approvals, numbering 75 approvals in total, during the six-month period of May 2011 to October 2011. This productivity accounts for approximately 30% of all regional center approval letters issued throughout the 20-year history of the Pilot Program. 4

Of those approval letters issued during this time period, 75% (56/75) were tied

# TRENDS IN APPROVALS OF REGIONAL CENTERS IN THE EB-5 INVESTOR VISA PROGRAM

Distribution of EB5 Regional Center Approvals Over Time  
1994-2012



to regional center proposals submitted to USCIS after it had imposed the requirement beginning in November 2010 to submit such proposals on Form I-924.<sup>5</sup>

The heightened activity in issuing regional center approvals in mid-2011 is starkly contrasted with the most recent four-month period from February to May 2012 when according to the FOIA production USCIS issued only 3 regional center approvals in total.<sup>6</sup> This paltry output in the latter case is curious in light of the public statements by USCIS indicating it has a much larger workforce available in the EB-5 adjudications unit at the California Service Center, and it has more than 100 pending regional center applications.<sup>7</sup> Of course, one missing piece here is that the FOIA production does not cover INS/USCIS denials of regional center proposals. (The July 2012 statistics issued by USCIS indicate it denied 143 proposals submitted on Form I-924, beginning with fiscal year 2010.) Setting aside for now the USCIS

work product on regional center denials, what is obvious from the plot below is that processing times in approved cases have trended upward since the start of 2011.

## GEOGRAPHIC DISTRIBUTION

The next visual is a simple chart indicating by state the geographic distribution of regional center designations. What is clear is that nearly every state in the United States is tied to at least one regional center designation. The territory of Guam also is covered by a regional center. Based solely on the FOIA production, we observe that only the states of Alaska, Arkansas, Delaware, Massachusetts, Nebraska, New Mexico, Rhode Island, West Virginia, and Wyoming are not presently involved in the Pilot Program. However, based on the author's personal knowledge as well as the USCIS website listing of one regional center each for Massachusetts and Wyoming, we know a comprehensive, reliable list of un-involved states would be shorter

than that suggested by the initial FOIA production.<sup>8</sup>

Another indication of the fact that the initial FOIA production does not include every regional center approval letter ever issued by INS and USCIS is that there are nine “orphan amendments” – amendment letters without a corresponding original regional center approval letter. A supplemental IIUSA request under FOIA is directed at filling in the holes of the initial production.

The map of the United States colorfully shows the distribution of original regional center approvals,<sup>9</sup> which are heavily concentrated in certain states, most prominently in California (55), Florida (18), Texas (16), and New York (13). As we would expect, the activity is most focused in states with the largest economies.<sup>10</sup>

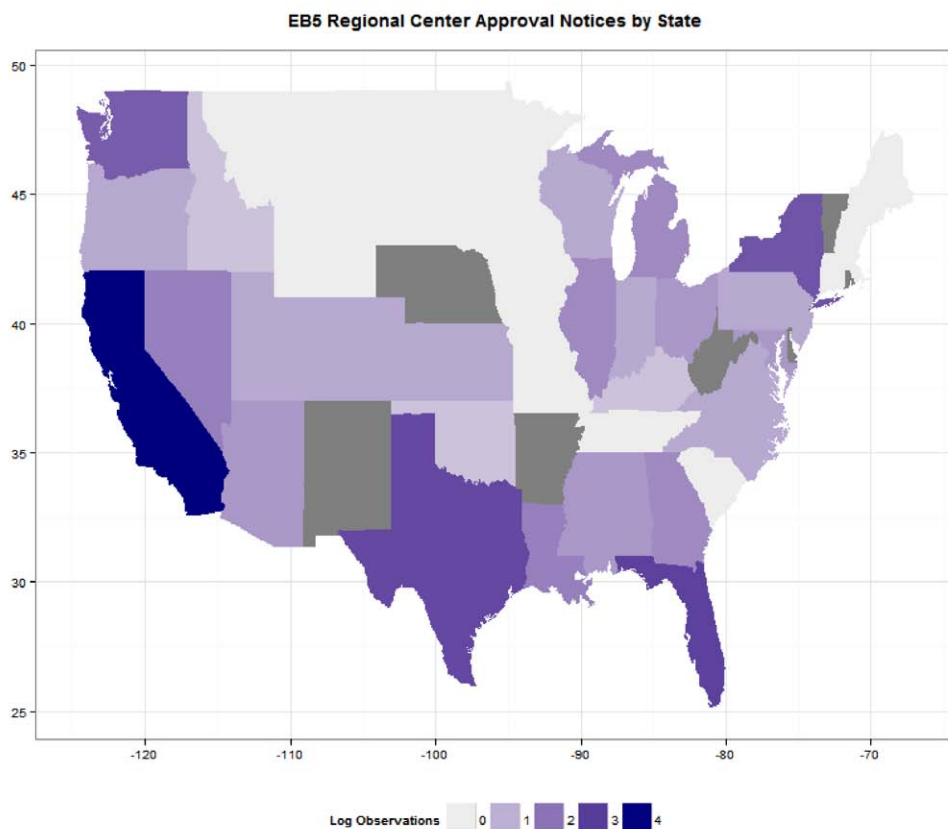
## REGIONAL CENTER BOUNDARIES

The next chart examines the regional center approvals by boundaries. We reviewed the approval letters for indications of boundaries by state, county, city, and alternative boundaries. We made no effort to measure actual size of the regional center territory, as the size of counties and cities can vary widely from state to state.

A majority of the approved regional centers are for boundaries ranging from 5 to 9 counties. Although USCIS has stated in numerous iterations that a regional center area must be contiguous,<sup>11</sup> we made no effort to confirm that the approved regional center boundaries consist solely of contiguous areas.

An estimated 31 of the regional center approval letters are for geographic areas including entire states, with a proportionally larger share occurring over time. We did not attempt to reconcile these outcomes with the statutory limitation on regional center boundaries to “a limited geographic area” and “consistent with the purpose of concentrating pooled investment in defined economic zones.”<sup>12</sup>

A smattering of the regional center approval letters include boundaries de-





fined by cities, Metropolitan Statistical Areas, enterprise zones within cities, and even census tracts.

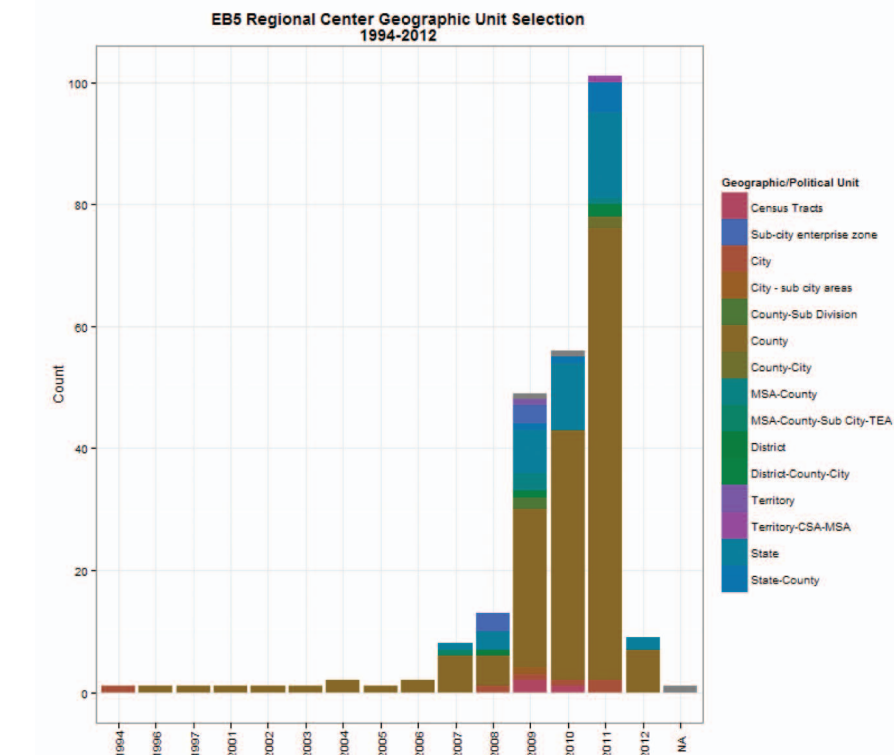
## INPUT-OUTPUT MODELS

Insofar as the approval letters constitute the government's authorization to operate as a regional center under the Pilot Program, we refer to the approval letter as the "Charter" or the "RC Charter letter". The FOIA production reveals a definite trend toward identifying in RC Charter letters the specific input-output model that the regional center applicant proposes to use for estimating job creation. Prior to implementation of Form I-924, the RC Charter letter did not mention the proposed input-output model in at least two-thirds of the observed cases. But post-implementation of Form I-924, almost uniformly the RC Charter letter specifies a particular input-output model. A description of the various input-output models is not within the scope of this paper,<sup>13</sup> but we did observe that a majority of the RC Charter letters identify IMPLAN, and the next in frequency was RIMS II. A dozen RC Charter letters indicate REDYN, and a few RC Charter letters refer to REMI and the State of Washington input-output model.

## CLUSTERS, INDUSTRY SECTORS, AND BUSINESS ACTIVITIES

The final topic covered in the presentation is perhaps a preview to the problem of mixed language in RC Charter letters. The confusion in language used by USCIS in these letters is troubling, but full consideration of the practical, negative consequences of this confusion of language is beyond the scope of this paper. Nevertheless, the FOIA production does reveal that from the beginning of the Pilot Program, first legacy INS and later USCIS has confused and alternated the terms "clusters" with "industry sectors" and then again with "business activities". These terms have different meanings, and thus, the interest in logging their appearance in the history of regional center approval letters.

The language of "clusters"<sup>14</sup> surfaces in 102 – easily a majority (102/178)-- of the RC Charter letters from 2007 to the present. The language of "industry sec-



tor" was not uniformly included in the RC Charter letters from 2006 and earlier. But by 2011, and now in 2012, RC Charter letters always refer to the approved industry sectors. Furthermore, in 2011 and 2012, the RC Charter letters almost always include NAICS code references. By contrast, in the period 2009 and earlier, involving more than 80 regional center approvals, only 3 RC Charter letters – or less than 2% -- included NAICS code references. Lastly, approval notices also seem to interchange the terms "sector" and "cluster" when referring to industries that are delineated with NAICS codes.

With respect to NAICS codes appearing in RC Charter letters, there is a trend toward more specificity as indicated in the next chart.<sup>15</sup> Whereas in the past USCIS had identified broad two-digit NAICS codes, more and more RC Charter letters in 2011 and 2012 include specific six-digit NAICS codes.<sup>16</sup> A discussion of the legal issues and the practical, negative consequences of this trend is not within the narrow scope and objectives of this paper.

The reference to "business activities" in RC Charter letters appears to relate to general economic/business activities rather than specific clusters of economic activity or industries. There were five discernable main categories and one sub-category of business activities listed in RC Charter letters. The main categories

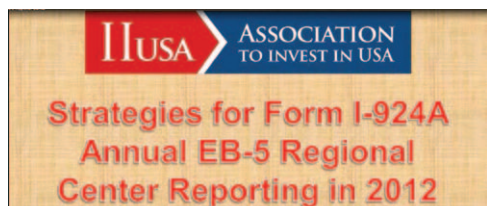
of business activities include loans, equity investments, management/operations, real estate, and construction. The notable sub-category that we observed was for startup equity investments. Interestingly, though, the author's practice experience suggests that this sub-category is not presently a significant factor in terms of frequency of occurrence as a business activity in the Pilot Program.

## CONCLUSION

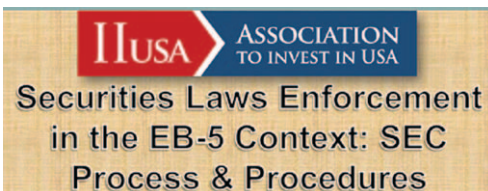
Our review of the FOIA materials provided by USCIS reveals significant trends in the USCIS administration of the Pilot Program for regional centers, namely, increased volume of regional center proposals handled by USCIS, longer processing times for adjudication of regional center proposals, expansion of the Pilot Program to include nearly every state in the country, a prevalence of county-based regional center boundaries, and the ever-growing significance of specific NAICS codes for identifying permissible regional center business activities and/or industry sectors. While a supplemental FOIA request should be helpful in terms of compiling a comprehensive repository of the entire INS/USCIS work product on RC Charter letters, the added substantive information to be gleaned from a supplemental production by USCIS, amounting to an estimated dozen approval letters, would not alter the basic findings in this analysis. ■

# INDUSTRY EVENT SCHEDULE

- **11/02/2012** Webinar on Office of Foreign Asset Control (OFAC), US Department of Treasury, Revises Regulations Related to EB-5 Transactions



- **11/09/2012** Webinar on Strategies for Form I-924A Annual EB-5 Regional Center Reporting in 2012: Information on how to file your I-924 petition.



- **02/22/2013** Webinar – Chicago Convention Center Study - Securities Laws Enforcement in the EB-5 Context: SEC Process and Procedures
- Register for 3rd Annual IIUSA EB-5 International Investment & Economic Development Forum in Las Vegas, NV! **06/19/2013 to 06/21/2013**

- **08/06/2013 – 08/09/2013:** Council of Development Finance Agencies (CDFA) National Development Finance Summit
- Register for the China International Fair for Investment and Trade (CIFIT) this **September 6-10, 2013**. The theme of this year's fair is Chinese investment overseas. IIUSA is in proud partnership with American Chamber of South China to present this exciting opportunity to our members.
- **09/18/2013 – 09/19/2013:** CDFA/IIUSA EB-5 Financing 101 Webcourse

The above webinars and more are available for purchase on our Online Marketplace at <http://iiousa-marketplace.myshopify.com>.

## CONNECT WITH IIUSA



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# IIUSA Reports on Trip to China to Discuss Emerging Industry Issues with Counterparts

IIUSA Executive Director, Peter D. Joseph, traveled to China this past February to discuss the Securities and Exchange Commission's recent enforcement action against a Chicago based Regional Center and the possible implications it has on the future of the EB-5 Program. IIUSA is pleased to report a successful and productive trip abroad.

The warm welcome received from the Exit/Entry associations in all three Chinese cities for IIUSA, including Shanghai, Guangzhou, and Beijing was most appreciated. During the trip, IIUSA received positive media coverage, promoting the organization as well as the U.S. EB-5 Immigrant Investors Program as a whole. In an effort to subdue doubts among Chinese foreign investors and stakeholders regarding the EB-5 Program which arose in the wake of the Chicago Convention Center case. Mr. Joseph stressed the fact that the U.S. securities laws are working efficiently and, if coupled with proper and thorough due diligence, are an effective method of preventing investments fraud.

As always, IIUSA is grateful for the warm hospitality extended by The American Chamber of Commerce in South China and for their being such gracious hosts. In particular we are thankful to Harley Seyedin for his leadership in our collaboration with his organization – assisting IIUSA with delivering the message of successful regional economic development through the EB-5 Program. Another special thanks to Chair of IIUSA's International Committee, Kelvin Ma, for his tireless

efforts for IIUSA in China – particularly on IIUSA's recent trip to China to address market concerns that resulted from the recent enforcement action by the Securities and Exchange Commission against a Regional Center (nonmember of IIUSA).

With support from the American Chamber of Commerce, as well as the Exit/Entry associations, IIUSA was successful in promoting the EB-5 Program and advancing the message of progressive international investment as a means toward tangible economic development in the U.S. IIUSA is looking forward to working closely with our partners overseas in the future. ■



IIUSA Executive Director, Peter D. Joseph, speaks to attendees in Guangzhou.

**Above:** Kelvin Ma (IIUSA International Committee Chair), Tom Loeffler (IIUSA Government Affairs, Senior Counsel at Akin Gump Hauer Strauss & Feld, LLP), Peter D. Joseph (IIUSA Executive Director), and Harley Seyedin (President, American Chamber of Commerce in South China) in Guangzhou.

## ATTENTION IIUSA MEMBERS!

# Join us in China this September at the China International Fair for Investment and Trade (CIFIT)!

In partnership with the American Chamber of Commerce in South China (AmCham South China), IIUSA is proud to present an exciting and exclusive opportunity to our members to exhibit and participate in the China International Fair for Investment and Trade (CIFIT) this September 6-11, 2013. The theme of this year's fair is Chinese investment overseas with the U.S. lined up as the "country of honor" – fitting perfectly with the EB-5 Regional Center Program.

This event promises to bring IIUSA's advocacy and education operations in China – the EB-5 industry's largest investor marketplace – to the next level!

**WHERE:** Xiamen, China

**WHEN:** 09/06/13 – 09/10/13

**EXHIBIT BOOTH COST:** \$3,850 This extremely low rate is offered exclusively to IIUSA Regional Center and Associate members on a first come, first serve basis. There are limited number of spaces available online at [iiusa.org](http://iiusa.org).

**SPONSORSHIP:** \$8,500 Receive all of the same amenities as exhibitors and sponsor IIUSA's EB-5 Seminar on 9/9!

### EXHIBITION & IIUSA MEMBER PARTICIPATION DETAILS

All IIUSA member exhibitors will be part of the U.S. Pavilion with AmCham South China members – conveniently located next to a pavilion of Chinese companies looking to invest in the U.S. IIUSA member exhibitors will also be invited to the AmCham South China Annual Cocktail/dinner on September 8th which is attended by senior executives, ambassadors, government officials, and Fair attendees seeking investment abroad. All booths will be 3 x 3 meters. Larger space and unique decoration can be made available for additional cost upon request.

IIUSA and AmCham South China will arrange all needed Fair registrations, security passes and invitations to all applicable events for IIUSA member exhibitors including banquets, opening ceremony, and other exclusive meetings- including the AmCham hosted, half-day US-China Investment seminar (which



[www.iiusa-cifit2013.eventbrite.com](http://www.iiusa-cifit2013.eventbrite.com)

included U.S. Ambassador Gary Locke as a speaker last year). Furthermore, IIUSA and AmCham South China will arrange all local transportation to and from hotel to various venues (there are different meetings every two hours). A group rate will be available at a local hotel. Exhibitors will be responsible for the costs associated with travel to/from the U.S. and hotel reservations.

All IIUSA member participants are expected to adhere to all applicable U.S./Chinese laws when participating, including U.S. securities laws. Consult with professionals to ensure compliance.

### MORE CIFIT DETAILS

According to AmCham South China's statistics from last year's Fair, the China International Fair for Investment and Trade (CIFIT) is where US\$298 million in investment is forged every minute, twenty four hours a day for three consecutive day (yes you read that correctly!), is strictly a Fair focused on "Investment" not commodities. The Fair was initiated almost 20 years ago by the new president of China Xi Jinping when he was vice mayor of Xiamen. The Fair is attended by at least the Vice Premier in charge of China's economy and each and every standing Vice Governor of every province and standing vice mayor of every city in China. The Fair is held in the beautiful seaside city of Xiamen (also known as the Paris of the Orient).

Last year some 17,000 businesses from China and around the world attended representing 130 countries. Many presidents, prime ministers, and ministers of many countries attend. AmCham South China's delegation exceeded 250 businesses and was joined by U.S. Ambassador Gary Locke. During those three days our delegation inked US\$3 billion in deals – a highlight being one company that signed eight deals worth US\$600 million! Over 2,000 private business executives from China, all seeking overseas investment opportunities, will be in attendance – in addition to the 17,000+ regular attendees. ■



THE AMERICAN CHAMBER OF COMMERCE  
IN SOUTH CHINA



# BY THE NUMBERS

**\$2.0+ Billion** projected EB-5 capital formation during FY2013

**95,000+** Total number of U.S. jobs created since FY2005

**\$4.7 Billion** dollars in EB-5 capital formation since FY2005

**90%** Average I-829 approval rate FY2009-2012

**237** Total number of IIUSA member organizations as of March 2013

## REGIONAL MEMBER MAP & WHAT'S NEW IN THE MEMBER DATABASE

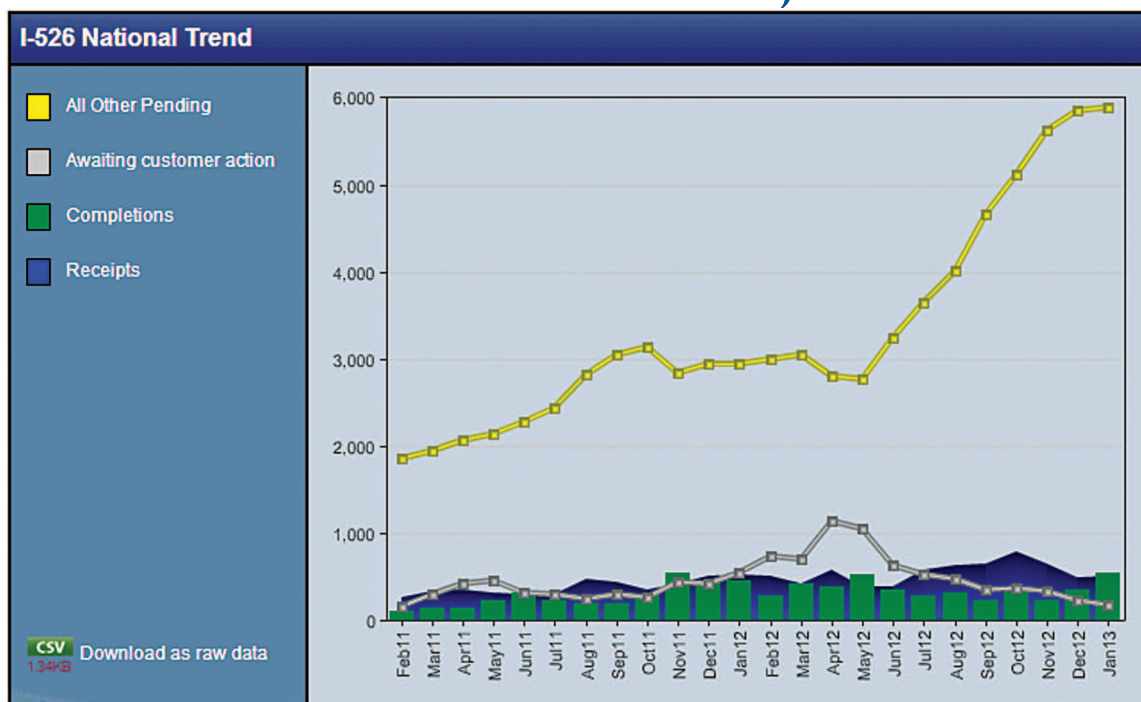


IIUSA is pleased to announce the launch of a new interactive map of its Regional Center Members! Users can now search Regional Centers by states served, year of approval, and by specific Regional Center name. More information, including approved industries, geographies, economic methodologies, and approval notices will be added to the map soon. Visit [www.IIUSA.org](http://www.IIUSA.org) and click on the 'Regional Center Members Interactive Map' tab.

### MEMBER DATABASE UPDATE:

All of the briefs in the SEC v. A Chicago Convention Center legal proceeding may now be found on Backpack. Click on the page called "SEC Enforcement Actions in EB-5" to view these files.

## I-526 PETITIONS PROCESSING TRENDS AS OF JANUARY 2013



# IIUSA MARKETPLACE

IIUSA is pleased to announce the opening of our new online store, IIUSA Marketplace!

With this online Marketplace located at **iiusa-marketplace.myshopify.com**, our valuable webinars and products are readily available to our constituents. New products will be added regularly, so check back often!

If you have any questions regarding our products, please contact Mirinda James, IIUSA Research /Administrative Assistant, at [mirinda.james@iiusa.org](mailto:mirinda.james@iiusa.org).



<http://iiusa-marketplace.myshopify.com>

# COMMITTEE CORNER

FIND OUT WHAT IIUSA'S COMMITTEES ARE UP TO...

- **Best Practices** – Updating current IIUSA Approved Best Practices, adopted 2007-2009, to reflect current market conditions.
- **Budget & Finance** –2013 Budget
- **International** – Expanding IIUSA membership overseas
- **Legislative** – Drafted questions for 10/16 USCIS Engagement – Form I-924 & I-924A Comments
- **Membership** – Expanding/adding value to IIUSA membership

Members email [info@iiusa.org](mailto:info@iiusa.org) with questions about serving on a Committee.

## IIUSA MOBILE APP IS AVAILABLE FOR DOWNLOAD NOW!

IIUSA's new Mobile App is now available for download in Android, iOS, or Blackberry! Carry all of the industry intelligence you need to stay informed about the EB-5 Regional Center industry right in your pocket while you are on the go...





# 7 PROJECTS

1 BILLION DOLLARS OF DEVELOPMENT

8,000 JOBS CREATED

329 MILLION DOLLARS OF EB-5 RAISED

1,800 LIVES CHANGED



U.S. IMMIGRATION FUND

With Regional Centers located in the world's most thriving markets, the U.S. Immigration Fund provides worthwhile opportunities for foreign investors and their families to obtain permanent U.S. residency through the EB-5 Visa Program. With projects ranging from oceanfront resorts to mixed-use developments and government funded incubators in South Florida to ultra-high-end condominiums in the heart of New York, the U.S. Immigration Fund has an investment opportunity to fit the needs of every international investor.

All amounts are estimates based on current and 2013 anticipated EB-5 Projects sponsored by U.S. Immigration Fund.